



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



February 21, 2001

Mr. Kevin Croteau
4 Jay Court
Raymond, NH 03077

**NOTICE OF DECISION
ADMINISTRATIVE FINE
No. AF 2000-062
(SHORELAND PROTECTION)**

Dear Mr. Croteau:

As you are aware, by Notice of Proposed Administrative Fine and Hearing No. AF 2000-062 issued September 25, 2000, the Water Division sought administrative fines totaling \$10,000 against you for alleged violations of RSA 483-B, the Comprehensive Shoreland Protection Act ("the Act"), arising from unauthorized work conducted on property located on West Shore Road, Winona Lake, New Hampton, NH ("the Property"). Pursuant to RSA 483-B:18, and based on my review of the evidence presented at the hearings held on this matter on December 4, 2000 and January 22, 2001, I have concluded that a fine of \$10,000 is appropriate as set forth below:

A fine in the amount of \$4,000 is imposed against you for failing to maintain a healthy, well-distributed stand of trees, saplings, shrubs, and ground covers on the Property.

A fine in the amount of \$4,000 is imposed against you for removing more than 50 percent of the basal area of the trees on the Property.

A fine in the amount of \$1,000 is imposed against you for failing to have erosion controls in place during earth moving activities and while soils on the Property were disturbed and unstable.

A fine in the amount of \$1,000 is imposed against you for constructing a permanent dock with two slips at the Property without first obtaining a permit from DES.

The \$10,000 fine shall be paid within 30 days of the date of the decision, or at your election, in ten equal payments of \$1,000 each in accordance with the following schedule:

First payment due	March 30, 2001	Sixth payment due:	August 31, 2001
Second payment due:	April 30, 2001	Seventh payment due:	September 28, 2001
Third payment due	May 31, 2001	Eighth payment due:	October 31, 2001
Fourth payment due	June 29, 2001	Ninth payment due:	November 30, 2001
Fifth payment due:	July 3, 2001	Tenth payment due:	December 31, 2001

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of Jim Ballentine, DES Legal Unit, PO Box 95, Concord, NH 03302-0095.

State shorelands are regulated under RSA 483-B. Under this statute, within the natural woodland buffer, not more than a maximum of 50 percent of basal area of trees, and a maximum of 50 percent of saplings shall be removed within a 20-year period. This vegetation and their living and undamaged root systems must be left in place and replacement plantings with naturalized species is allowed to maintain the 50 percent level. The statute further requires erosion control devices in place while soils are disturbed and unstable. Additionally, the statute requires a permit before a permanent dock is constructed within the protected shoreland. The purpose of maintaining this buffer, installing erosion control devices, and obtaining a permit for a permanent dock, is to protect water quality by minimizing erosion, preventing siltation and turbidity, and stabilizing soils. You violated the Act by failing to maintain a well-distributed stand of trees, saplings, shrubs, and ground covers on the Property within the natural woodland buffer of the protected shoreland, by failing to design and construct new structures to prevent erosion of exposed soils, and by constructing a permanent dock at the Property without first obtaining a permit from DES.

This decision is based on the following findings and conclusions:

The land is a one-half acre lot located on West Shore Road, New Hampton, NH and is more particularly described on the New Hampton tax maps as Tax Map U14 Lot 31 ("the Property").

2. Kevin Croteau's company, JKC Properties, LLC, owns the Property.
3. Winona Lake ("the Lake") is located adjacent to the Property.
4. RSA 483-B:9, V(a)(2)(A) requires that "[n]ot more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place. Replacement planting with native or naturalized species may be permitted to maintain the 50 percent level."
5. RSA 483-B:9, V (c)(1) requires that "[a]ll new structures within protected shoreland shall be designed and constructed in accordance with rules adopted by [DES] pursuant to RSA 541-A, relative to terrain alteration under RSA 485-A:17, for controlling erosion and siltation of public waters, during and after construction."
6. RSA 483-B:6, I(b) requires any person intending to "[c]onstruct a water dependent structure, alter the bank, or construct or replenish a beach [to] obtain approval and all necessary permits pursuant to RSA 482-A.

7. On November 28, 1998, Mr. Croteau submitted a Notice of Intent to Cut Wood or Timber form to the Town of New Hampton ("the Town").
8. On December 3, 1998, Mr. Croteau met with the Town's Board of Selectmen to discuss the Property. At this meeting the Selectmen expressed concern over the amount of timber to be harvested from the Property. The Selectmen provided Mr. Croteau with a copy of RSA 483-B and urged him to contact DES.
9. On December 28, 1998, Mr. Croteau submitted an application to the Town for a building permit for new construction on the Property. The Town denied the application, in part, because there was no septic system approval, the building location did not comply with the setbacks identified in DES rules, and the lot was a substandard size.
10. By letter dated January 7, 1999, the Town signed and returned the Notice of Intent to Cut Wood form but again expressed concern with respect to the amount of timber to be harvested and urged Mr. Croteau to contact DES.

In September 1999, John Harrington, Mr. Croteau's logger, notified DES that he believed that the extent of the tree cutting proposed by Mr. Croteau exceeded the amounts allowed under RSA 483-B.

12. On September 20, 1999, DES inspected the Property with Mr. Harrington and Mr. Croteau and discussed RSA 483-B as it applied to the Property.
13. By letter dated September 27, 1999, DES informed Croteau as to the allowable limits for tree cutting on the Property and again discussed RSA 483-B. A copy of the statute and applicable rules were enclosed with the letter.
14. On April 3, 2000, the Town notified DES that trees had been cut down on the Property.
5. On April 6, 2000, the New Hampton Conservation Commission notified DES that most of the trees on the Property, including all of the large white pine trees, had been cut.
16. On April 21, 2000, DES inspected the Property and observed that more than half of the trees and other vegetation were removed from the protected shoreland, erosion control devices were not in place, and an unpermitted dock was abutting the Property. In particular, DES observed that 22 soft-wood trees approximately 75 feet tall, and seven hard-wood trees approximately 45 feet tall had been cut down.
17. On May 31, 2000, DES issued a Notice of Findings to Mr. Croteau identifying the deficiencies observed during the April 21st inspection.
18. On June 20, 2000, Mr. Croteau met with DES to discuss the violations and determine what was required to bring the Property into compliance.

19. On September 22, 2000, DES issued Administrative Order No. WD 00-52 (“the Order”) to Mr. Croteau ordering him, in part, to install erosion control devices, submit a revegetation plan, replant the Property according the plan, and remove, or submit a permit application, for the dock. Mr. Croteau failed to comply with the Order.
20. Under RSA 485-A:2, XIV “Surface waters of the state” is defined as “streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial.”
21. Winona Lake is a jurisdictional water under RSA 485-A
22. Under RSA 483-B:4, XI, a “natural woodland buffer” is a forested area consisting of a variety of species of trees, saplings, shrubs, and ground covers.
23. The trees, saplings, shrubs, and ground covers removed from an area adjacent to the Lake was a natural woodland buffer under RSA 483-B:4, XI.
24. Under RSA 483-B:4, XV, “protected shoreland” means for natural fresh water bodies without artificial impoundments and for artificially impounded fresh water bodies, all land located within 250 feet of the reference line of public water.
25. The area adjacent to the Lake where trees and vegetation were removed is protected shoreland under RSA 483-B:4, XV.
26. Mr. Croteau violated RSA 483-B:9 V(a)(2)(A) by failing to maintain a healthy well-distributed stand of trees, saplings, shrubs, and ground covers on the Property within the natural woodland buffer of the protected shoreland.
27. For a violation of RSA 483-B:9 V(a)(2)(A), Env-C 611.06(c)(1) authorizes a \$4,000 fine per 150 feet of frontage or portion thereof.
28. Mr. Croteau violated RSA 483-B:9, V(a)(2)(A) by removing more than 50 percent of the basal area of the trees on the Property.
29. For a violation of RSA 483-B:9, V(a)(2)(A), Env-C 611.06(d)(1) authorizes a \$4,000 fine per 150 feet of frontage or portion thereof..
30. Mr. Croteau violated RSA 483-B:9, (V)(c)(1) by failing to have erosion controls in place during earth moving activities and while soils on the Property were disturbed and unstable
31. For a violation of RSA 483-B:9 V(c)(1), Env-C 603.02(i) authorizes a \$1,000 fine.
32. Mr. Croteau violated RSA 483-B:6, I(b) by constructing a permanent dock with two slips at the Property without first obtaining a permit from DES.

- 33 For a violation of RSA 483-B:6, I(b), Env-C 614.03(d) authorizes a fine of \$1,000.
34. Under Env-C 601.09(c), the imposed fine must be reduced by 10 percent if the Respondent proves certain mitigating factors by a preponderance of the evidence.
35. Mr. Croteau did not present any mitigating factors to warrant a reduction in the fines.

You violated RSA 483-B by failing to maintain a healthy well-distributed stand of trees, saplings, shrubs, and ground covers on the Property within the natural woodland buffer of the protected shoreland, by failing to design and construct new structures to prevent erosion of exposed soils, and by constructing a permanent dock with two slips without first obtaining a permit from DES. Thus, for the reasons discussed above, I have concluded that the \$10,000 fine imposed against you is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with RSA 541 and Env-C 206.

Very truly yours,

COPY 

Robert W. Varney
Commissioner

cc: New Hampton Conservation Commission
New Hampton Board of Selectmen
Harry T. Stewart, P.E., Director, DES Water Division
Gretchen Rule, DES Enforcement Coordinator
Susan Weiss Alexant, DES Hearings and Rules Attorney
Public Information & Permitting, DES
Shoreland Protection Program, DES